

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1918.02
 COMPLAINT INVESTIGATOR: Brian Simkins
 DATE OF COMPLAINT: May 20, 2002
 DATE OF REPORT: June 19, 2002
 REQUEST FOR RECONSIDERATION: no
 DATE OF CLOSURE: October 2, 2002

COMPLAINT ISSUES:

Whether the Gary Community Schools violated:

511 IAC 7-25-6 by failing to conduct a reevaluation of a student with a disability at least every 36 months.

511 IAC 7-27-6(a)(1) by failing to include in the student's individualized education program (IEP) a statement of the student's present levels of education performance.

511 IAC 7-27-4(c)(3) by failing to ensure the case conference committee considered strategies, including positive behavioral interventions and supports, to address a student's behavior that impedes the student's learning or the learning of others.

511 IAC 7-27-6(a)(2) by failing to include in the student's IEP a statement of measurable annual goals of what the student can be expected to accomplish within a twelve month period.

511 IAC 7-27-4 by failing to utilize the case conference committee:

- a. to determine whether a change of placement was warranted for the student;
- b. to develop a behavioral intervention plan; and
- c. to develop a statement of needed transition services

511 IAC 7-27-5(d) by changing the student's placement without obtaining the parent's written consent.

511 IAC 7-29-1(f) by failing to provide educational services to a student with a disability who has been suspended for more than ten cumulative days in a school year.

FINDINGS OF FACT:

1. The Student is seventeen years old and attends the local high school (the "School"). The Student is eligible for special education and related services as a student with a mild mental disability (MiMH).
2. The School acknowledges that a reevaluation of the Student was not conducted within the required timeline specified by Article 7. The Student was reevaluated on April 22, 2002. Prior to that date, the Student had not been evaluated since September 5, 1995.

3. The Complainant asserts that there are a number of problems with the Student's IEP dated February 7, 2002, one being the School's alleged failure to include a statement of the Student's present levels of educational performance. The School acknowledges in its response that this IEP indicates the Student's present levels of educational performance were inappropriately reported or less than satisfactory. Upon review, the IEP does not contain a description of how the Student's disability affects the Student's involvement and progress in the general education curriculum, including cognitive, functional, social and emotional behavioral skills. This IEP does contain a statement of needed transition services but it consists of a recommendation for vocational education and not a coordinated set of activities that are designed within an outcome-oriented process, are incorporated into the Student's IEP, and promote movement from school to post-school activities.
4. The Student's IEP dated February 7, 2002, includes a Functional Behavioral Assessment ("FBA") and a Behavioral Intervention Plan ("BIP"). However, the FBA was conducted on the same day the IEP was developed at the case conference committee ("CCC") meeting on February 7, 2002, and it consists of a worksheet filled out by two of the Student's teachers with certain behaviors checked off that best seem to describe the Student and a few suggestions of what might work to improve the Student's behavior. The School cannot provide evidence of a systematic collection and analysis of data that is used to identify patterns in the Student's behavior that could serve as a basis for developing positive behavioral strategies best suited to match the severity of the Student's behavior. Moreover, the BIP was developed the same day, February 7, 2002, by five teachers without the input of the CCC. However, subsequent to February 7, 2002, the BIP was never put into practice and the FBA was not discussed until a CCC meeting was convened on April 17, 2002, to conduct a manifestation determination.
5. The Student's IEP dated February 7, 2002, does not include statements of measurable annual goals of what the Student can be expected to accomplish within a twelve month period. On most of the goal pages of the IEP there is no description of an academic or behavioral goal that is measurable, and one of the goal pages does not have an annual measurable goal written.
6. A CCC meeting was convened on April 17, 2002, to conduct a manifestation determination and further discuss the Student's behavior. The CCC agreed that the Student's behavior was a manifestation of the Student's disability and that the Student's current IEP was not implemented because the BIP was ignored and not properly developed and because the behavioral goals were not appropriate nor measurable. As a result, the CCC recommended to change the Student's educational setting to homebound. However, the IEP, as indicated on the final page, shows in its summary of service recommendation that the IEP was reviewed, but no changes were made. Furthermore, the agreement section on the same page indicates the parent checked off: "I/We need further information before making a decision about agreement. Please contact me/us to schedule time for further discussion." The CCC planned to reconvene on April 22, 2002, to utilize the CCC to determine whether a change of placement to homebound was warranted for the Student and to revise the IEP and obtain the parent's written consent. The CCC never convened on April 22, 2002. The CCC did not convene again until May 28, 2002. The School precluded the Student from attending on school grounds. The Student nevertheless started homebound services on April 22, 2002, and returned to school on May 29, 2002.
7. The School acknowledges that its attendance records for the Student are not accurate. The School was not able to provide the investigator with a complete and accurate attendance record to clarify the number of days the Student was suspended. However, based on the information provided by the assistant director of special education related to the manifestation determination on April 17, 2002, the Student was suspended on September 17 and 18, 2001, October 4, 5, and 8, 2001, and April 11, 12, 15, 16, and 17, 2002. This is a cumulative total of ten instructional days of suspension. However, the front of the IEP dated February 7, 2002, indicates that the Student had been suspended twice for ten days each suspension. In addition, a letter from the School's principal alludes to a three-day suspension the Student served before being

suspended again on April 11, 2002. The School claims that these three days of suspension were served in-school; however, the School provided no documentation to demonstrate that the Student's IEP was implemented during the in-school suspension. As a result, the days of in-school suspension are counted in the cumulated total. The School provided no services to the Student subsequent to the tenth cumulative day of suspension during the 2001-2002 school year.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School failed to conduct a reevaluation of the Student within 36 months. The Student was evaluated on September 5, 1995, and then again on April 22, 2002. Therefore, a violation of 511 IAC 7-25-6 is found.
2. Finding of Fact #3 indicates that the School failed to include in the Student's IEP dated February 7, 2002, a statement of the Student's present levels of educational performance. Therefore, a violation of 511 IAC 7-27-6(a)(1) is found.
3. Finding of Fact #4 indicates that the School failed to ensure the CCC on February 7, and April 17, 2002, considered strategies, including positive behavioral interventions and supports, to address the Student's behavior that impedes the Student's learning and the learning of others. The School failed to utilize the CCC to appropriately address the Student's behavior. Therefore, a violation of 511 IAC 7-27-4(c)(3) is found.
4. Finding of Fact #5 indicates the School failed to include in the Student's IEP dated February 7, 2002, a statement of measurable annual goals of what the Student can be expected to accomplish within a twelve-month period. Therefore, a violation of 511 IAC 7-27-6(a)(2) is found.
5. Finding of Fact #6 indicates that, although the CCC recommended a change of placement for the Student on April 17, 2002, it made no revisions to the Student's IEP to reflect the change to homebound services. Further, the CCC was to reconvene on April 22 to confirm the change of placement recommendation. However, the change of placement occurred without the CCC reconvening and without the parent's consent. Finding of Fact #4 reflects that a BIP was developed outside of the CCC. Finding of Fact #3 indicates that no statement of needed transition services was developed by the CCC. A violation of 511 IAC 7-27-4 is found with regard to the School's failure to utilize the CCC to determine a change of placement and to develop a BIP.
6. Finding of Fact #6 also shows that the Student's placement was changed to homebound without obtaining the parent's written consent. Therefore, a violation of 511 IAC 7-27-5(c) is found.
7. Finding of Fact #7 indicates the School failed to provide educational services to the Student who had been suspended for more than ten cumulative days in the school year. This failure is, in part, due the School's inability to provide accurate student attendance/discipline records. Therefore, a violation of 511 IAC 7-29-1(f) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

Gary Community Schools shall:

1. Convene a CCC prior to the beginning of the 2002-2003 school year to review, revise, and to ensure the Student's IEP is properly written. Specifically, the CCC shall:
 - a. develop a statement of needed transition services to describe the Student's participation in vocational education;
 - b. specify the Student's present levels of educational performance;
 - c. write new annual goals including short-term objectives;
 - d. develop a BIP that describes how the Student's environment will be altered, identifies positive behavioral intervention, and specifies which skills will be taught in an effort to change the Student's specific pattern of behavior.

The CCC shall also consider the need for compensatory services resulting from the School's failure to reevaluate the Student in a timely manner, the unilateral change of placement, and the deficient IEP. The CCC Report must clearly document the CCC's consideration of the need for compensatory services and must clearly describe the services to be provided. The School must ensure that the IEP is an "agreed-upon IEP" with consent from the parent. A copy of the CCC Report and the revised IEP (signed by the parent) shall be sent to the Division no later than September 6, 2002.

2. Send a written reminder to building administrators and all special education personnel reminding them that:
 - e. A student's placement may not be changed without first convening the CCC and obtaining written parental consent;
 - f. The School is responsible for providing educational services to a student with a disability who has been suspended for more than ten cumulative days in a school year; and
 - g. The School must conduct a reevaluation of a student with a disability at least every 36 months.

A copy of the written memorandum and an assurance statement that the memorandum was sent to building administrators and special education personnel shall be submitted to the Division no later than September 6, 2002.

3. Review and, if necessary, revise policies and procedures for conducting an FBA and developing a BIP. The policies and procedures shall include, but not necessarily be limited to, the means for systematically collecting and analyzing student data that will adequately provide the results necessary for developing a BIP that will vary in length and scope depending on the severity of a student's behavior. With regard to BIPs, the policies and procedures must emphasize the importance of including a description of how a student's environment will be altered, identifies positive behavioral intervention strategies, and specifies which skills will be taught in an effort to change a student's behavior. The procedures must identify how the BIP will be linked to the information gathered through a FBA and how the BIP will maximize consistency of implementation across people and settings in which a student is involved. A copy of the policies and procedures shall be submitted to the Division no later than September 6, 2002. Further, the School shall provide in-service training to appropriate personnel regarding these policies and procedures. The School shall send the agenda, notes, materials, handouts, and a copy of the attendance sheet for the in-service to the Division no later than October 1, 2002.